



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 25, 1996

Mr. James T. Jeffrey, Jr.
Remington & Jeffrey
1306 W. Abram
Arlington, Texas 76013-1711

OR96-0074

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37850.

The Housing Authority of the City of Waco (the "authority") received an open records request from Mr. James T. Hitt for "the City of Waco video of the Sewer Line at the South Terrace public housing development made in 1993." You contend that this record comes under the protection of the litigation exception, section 552.103 of the Government Code. Having reviewed the videotape, and in accordance with a previous determination of this office, *see* Open Records Letter No. 95-1529 (1995), we conclude that you have met your burden in establishing the applicability of section 552.103 to the video tape recording of the sewer line. The authority therefore may withhold this item at this time.

Mr. Hitt has also requested the following two items:

Tape of the public session of the commissioners meeting of
August 1995; and

Tape recording of the executive session of the August 1995
meeting.

The Texas Open Meetings Act, chapter 551 of the Government Code, governs whether these items must be released to the public. Section 551.022 of the Government Code specifically provides:

The minutes and tape recordings of an open meeting are public
records and shall be available for public inspection and copying on

request to the governmental body's chief administrative officer or the officer's designee.

Information specifically made public by statute may not be withheld from members of the public under the litigation exception. *See, e.g.,* Open Records Decision Nos. 221 (1979), 146 (1976); *see also* Open Records Decision No. 525 (1989) at 3 and authorities cited therein. The tape recording of the public portion of the commissioners meeting is public information and must be released.

On the other hand, the tape recording of the executive session of the commissioners meeting must be withheld in its entirety. Section 551.104(c) of the Government Code provides that the certified agenda and tape recording of an executive session is available for public inspection only under a court order requiring such a release. Accordingly, the authority may not release any portion of the recorded executive session absent a court order instructing it to do otherwise. *See also* Open Records Decision No. 495 (1988) (Open Meetings Act removes certified agendas and tapes of executive sessions from review by the attorney general under Open Records Act).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", followed by a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/ch

Ref.: ID# 37850

Enclosures: Submitted video tape

cc: Mr. James T. Hitt
c/o Kenneth W. Byford
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(w/o enclosures)